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RECORDATION NO.

Filed & Recorded

DEC 27 1968 12:15 PM

INTERSTATE COMMERCE COMMISSION

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I. C. C.
FEE OPERATION BR.

AGREEMENT AND ASSIGNMENT dated as of October 15, 1968, between LEASE FINANCING CORPORATION (hereinafter called the Seller), and THE FIDELITY BANK, having offices at Broad and Walnut Streets, Philadelphia, Pennsylvania 19109, acting as Agent under a Finance Agreement dated as of October 15, 1968 (hereinafter called the Finance Agreement), said Bank, so acting, being hereinafter called the Assignee.

WHEREAS, the Seller, NEW ENGLAND MERCHANTS FINANCIAL CORPORATION, a Massachusetts corporation (hereinafter called the Vendee), and PENN CENTRAL COMPANY (hereinafter called the Guarantor), have entered into a Conditional Sale Agreement dated as of October 15, 1968 (hereinafter called the Conditional Sale Agreement), covering the sale and delivery, on the conditions therein set forth, by the Seller and the purchase by the Vendee of the railroad equipment described in Annex A to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Seller, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Seller hereby assigns, transfers, and sets over unto the Assignee, its successors and assigns:

(a) All the right, title and interest of the Seller in and to each unit of the Equipment;

(b) All the right, title and interest of the Seller in and to the Conditional Sale Agreement (except the duty to sell and deliver the Equipment and the right to receive the payments specified in the second paragraph of Article 2 thereof, in the first paragraph and

in subparagraph (a) of the third paragraph and in the third sentence of the fifth paragraph of Article 3 thereof and in the last paragraph of Article 16 thereof and reimbursement for taxes paid or incurred by the Seller), and in and to any and all amounts which may be or become due or owing to the Seller under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee or the Guarantor under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited by subparagraph (b) of this paragraph, all the Seller's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Seller for or on account of the failure of the Vendee or the Guarantor to make any of the payments provided for in, or otherwise to comply with any of the provisions of, the Conditional Sale Agreement; *provided, however*, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Seller to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to the warranties and agreements contained or referred to in Articles 14 and 15 of the Conditional Sale Agreement or relieve the Vendee or the Guarantor from their respective obligations to the Seller contained or referred to in Articles 1, 2, 3, 10 and 15 of the Conditional Sale Agreement (except that the Assignee shall also be entitled to the benefit of the Vendee's obligations under said Articles); it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 16 of the Conditional Sale Agreement, all obligations of the Seller to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee, its successors and as-

signs, against and only against the Seller. In furtherance of the foregoing assignment and transfer, the Seller hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Seller, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee and the Guarantor with the terms and agreements on their parts to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Seller covenants and agrees that it will sell and deliver the Equipment to the Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Seller. The Seller further covenants and agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of the Equipment to the Vendee under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Guarantor under the Lease (as defined in the Conditional Sale Agreement); and the Seller further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to said delivery of such unit by the Seller to the Vendee; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Vendee thereunder.

The Seller will not deliver any of the Equipment to the Vendee under the Conditional Sale Agreement until the Conditional Sale Agreement has been filed pursuant to Section 20c of the Interstate Commerce Act and in all other jurisdictions in which filing or recording may be required to protect fully the title of the Assignee in and to the Equipment (including the execution and filing of all financing statements and continuation statements in respect of the spare parts included in the Equipment).

The Seller covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Seller will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Vendee arising out of a breach by the Seller or of the builder of the Equipment of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Guarantor by the Seller. Any and all such obligations shall not be enforceable against the Assignee or any party or parties in whom title to the Equipment or any unit thereof or the rights of the Seller under the Conditional Sale Agreement shall vest by reason of this Assignment or of successive assignments. The foregoing indemnification provision is conditioned upon (1) the Assignee promptly moving or taking other timely action on the basis of Article 16 of the Conditional Sale Agreement to strike any such defense, setoff, counterclaim or recoupment asserted by the Vendee or the Guarantor and (2) if the court or other body having jurisdiction denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue, the Assignee promptly notifying the Seller

of the asserted defense, setoff, counterclaim or recoupment and giving the Seller the right, at the Seller's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

The Seller agrees that any amount payable to it by the Vendee or the Guarantor, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge, security interest or other encumbrance on any unit of the Equipment in respect of which the Assignee pays to the Seller the amounts required to be paid by the Assignee under Section 5 hereof.

SECTION 3. The Seller will cause to be plainly, distinctly, permanently and conspicuously marked on each unit of railroad rolling stock in the Equipment, at the time of delivery thereof to the Vendee, in letters not less than one-half inch in height, the following legend:

"THE FIDELITY BANK, PHILADELPHIA, PA.,
AGENT—OWNER".

SECTION 4. Upon request of the Assignee, its successors and assigns, the Seller will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Seller therein or in the Equipment.

SECTION 5. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 3) of Equipment, shall pay to the Seller an amount equal to that portion of the Invoiced Purchase Price (as defined in said Article 3) of such Group not required to be paid pursuant to subparagraph (a) of the third paragraph of said Article 3, on the prior conditions that:

(A) The Budd Company (hereinafter called the Builder) has executed the Agreement dated as of December 15, 1968, between The Budd Company and the Assignee;

(B) in connection with the initial settlement under the Conditional Sale Agreement for each unit of the Equipment in such Group which is suitable for revenue service in connection with the Northeast Corridor Project undertaken under the High Speed Ground Transportation Act of 1965 (hereinafter called the Corridor Project), there shall have been delivered to the Assignee (with a signed counterpart to the Vendee) the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) Bills of Sale dated the date of delivery of such unit pursuant to Article 2 of the Conditional Sale Agreement, from the Builder to the Seller and from the Seller to the Assignee, respectively, confirming the transfer to the Seller or the Assignee, as the case may be, of title to such unit of the Equipment in the Group and warranting to the Seller, or to the Assignee and the Vendee, as the case may be, that at the time of delivery to the Seller under the Contract (as hereinafter defined), or to the Vendee under the Conditional Sale Agreement, the Builder or the Seller, as the case may be, had legal title to such unit and title to such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Guarantor under the Lease;

(b) First Certificate of Acceptance of two of the following officers of the Guarantor: the Chief Engineer—Passenger Equipment, the Assistant Vice President—Corporate or any vice president in charge of operations acting as agents for the Guarantor and the Vendee (hereinafter called the Agents) with respect to each such unit of Equipment in the Group (hereinafter called the First Certificate of Acceptance) to the

effect: (i) that each such unit is new, standard-gauge, high-speed railroad passenger equipment; (ii) that the design, quality and specifications of each such unit conform to all Department of Transportation, Interstate Commerce Commission and all applicable state and local requirements and specifications reasonably interpreted as being applicable to railroad passenger equipment of the character of such unit; (iii) that each such unit is in good order and condition for the purpose of moving passengers in revenue service in connection with the Corridor Project; (iv) that each such unit substantially meets the Specifications (as defined in the Conditional Sale Agreement) applicable to Contract No. 4899, as supplemented and modified (hereinafter called the Contract), between the Builder and the Guarantor, as purchaser, which Contract the Guarantor has assigned to the Seller, with such exceptions to the Specifications known to the Agents at the date of such First Certificate of Acceptance as are set forth in a schedule thereto, none of which exceptions affect the placing of any such unit in revenue service in connection with the Corridor Project; (v) that the fair value of each such unit is at least 80% of the Base Price thereof (as that term is defined in the Conditional Sale Agreement); and (vi) that each such unit has been inspected and accepted by the Agents on behalf of the Vendee and the Guarantor under the Conditional Sale Agreement and on behalf of the Guarantor under the Lease and that such unit is marked as provided in Article 9 of the Conditional Sale Agreement and as provided in § 4 of the Lease;

(c) Invoice from the Builder to the Seller and from the Seller to the Assignee in each case for 80% of the Base Price of such unit of the Equipment in the Group, accompanied by or having endorsed thereon a certification by officers of the Seller, and of the Vendee and the Guarantor, respectively, as to the correctness of the price of such unit as set forth in said invoice;

(d) (i) Certificate of the Seller, (x) certifying that the obligation of the Assignee to make payment to the Seller for the units of the Equipment in the Group is limited to the Purchase Price of the units of the Equipment in the Group as determined in accordance with Article 3 of the Conditional Sale Agreement; and (y) confirming its agreement that any claim that it may have in respect of such units then or thereafter arising out of the Guarantor's failure or alleged failure to deliver the Second Certificate of Acceptance (as hereinafter defined) shall represent an unsecured claim of the Seller against the Guarantor, and the Seller then has nor shall have any lien on or security interest in or claim against any unit of the Equipment in the Group or any claim against the Assignee with respect to such failure or alleged failure; and (ii) certificate of the Builder to the effect that the representations of the Builder set forth in the Agreement dated as of December 15, 1968, between the Builder and the Assignee are in effect as of such Closing Date;

(e) Opinion, dated as of such Closing Date, of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and for the Investors named in the Finance Agreement, stating that (i) the Finance Agreement has been duly authorized, executed and delivered by the Assignee and the Guarantor and is a valid agreement binding upon said parties, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a valid and binding instrument enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the respective parties hereto and is a valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (v) security title to the Equip-

ment in the Group is validly vested in the Assignee and such Equipment, at the time of delivery thereof to the Vendee under the Conditional Sale Agreement, was free of all claims, liens, security interests and other encumbrances except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Guarantor under the Lease, (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this Assignment, or, if any approval is necessary, it has been obtained, (vii) the Conditional Sale Agreement, this Assignment and the Lease have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and all other filing or recordation necessary for the protection of the rights of the Assignee in and to the Equipment in any state of the United States of America and the District of Columbia has been undertaken and (viii) registration of the Conditional Sale Agreement, this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended;

(f) Opinions of counsel for the Vendee and the Guarantor, dated as of such Closing Date, stating that (i) the Vendee or the Guarantor, as the case may be, is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation, and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered on behalf of the Vendee or the Guarantor, as the case may be, and is a valid and binding instrument enforceable

against the Vendee or the Guarantor, as the case may be, in accordance with its terms, and to the effect set forth in subparagraph (e) of this subdivision (B);

(g) Opinion of counsel for the Seller, dated as of such Closing Date, to the effect set forth in subparagraph (e) of this paragraph and stating that (i) the Seller is a duly organized and existing corporation in good standing under the laws of the state of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) that no municipal, state or federal tax, judgment or other liens or security interests have been filed against or encumber Seller's title in and to the various units of the Equipment under the Conditional Sale Agreement (such opinion to be furnished by independent counsel satisfactory to counsel for the Assignee);

(h) Opinion, dated as of such Closing Date, of counsel for the Builder, stating that (i) the Bill of Sale described in subparagraph (a) of this subdivision (B) and the Agreement dated as of December 15, 1968, between the Builder and the Assignee have been duly authorized, executed and delivered by the Builder, (ii) said Agreement is in full force and effect as of the date of such opinion and (iii) the Builder has sold and assigned to the Seller all right, title and interest to the Equipment in the Group free of all claims, liens, security interests and other encumbrances, except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Guarantor under the Lease; and

(i) Receipt from the Seller and the Builder for the amounts invoiced by them, respectively, under the invoices referred to in (c) above; and

(C) in connection with the final settlement for each unit of the Equipment in such Group which meets all the Specifications referred to in the Conditional Sale Agreement and in the Contract, there shall have been delivered to the Assignee (with a signed counterpart to the Vendee) the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to Messrs. Cravath, Swaine & Moore:

(a) a supplemental invoice from the Builder to the Seller and from the Seller to the Assignee, respectively, in each case for the remaining 20% of the Base Price of such unit, accompanied by or having endorsed thereon a certification by officers of the Seller, and of the Vendee and the Guarantor, respectively, as to the correctness of the price of each such unit set forth in said supplemental invoice;

(b) a Second Certificate of Acceptance of the Agents with respect to such unit (hereinafter called the Second Certificate of Acceptance) to the effect: (i) that such unit is new, standard-gauge, high-speed railroad passenger equipment; (ii) that the design, qualifications and specifications of such unit conform to all Department of Transportation, Interstate Commerce Commission and all applicable state and local requirements and specifications reasonably interpreted as being applicable to railroad passenger equipment of the character of such unit; (iii) that such unit is in good order and condition for the purpose of moving passengers in revenue service in connection with the Corridor Project; (iv) that such unit fully meets the Specifications applicable to the Contract; (v) that the fair value of such unit is at least 100% of the Base Price thereof; and (vi) that such unit has been inspected and accepted by the Agents on behalf of the Vendee and the Guarantor under the Conditional Sale

Agreement and on behalf of the Guarantor under the Lease and that such unit is marked as provided in Article 9 of the Conditional Sale Agreement and as provided in § 4 of the Lease;

(c) opinions of counsel required by subparagraphs (e), (f) and (g) of subdivision (B) above; and

(d) the receipts set forth in subparagraph (i) of subdivision (B) above.

If a unit of the Equipment meets all the Specifications referred to in the Conditional Sale Agreement and in the Contract at the time of the first settlement and a Second Certificate of Acceptance provided for in subdivision (C) above is delivered at the time of the first settlement, the First Certificate of Acceptance need not be delivered (in which case the certificate of acceptance so delivered shall be deemed to be both the First Certificate of Acceptance and the Second Certificate of Acceptance) and the first settlement may be made on the basis of invoices for 100% of the Base Price of such unit; *provided, however*, that at the time of such first settlement all the remaining documents listed in subdivision (A) above shall be delivered.

In giving the opinions specified in this Section 5, counsel may (i) qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally and (ii) state that such opinion does not pass upon questions involving interest on interest. In giving the opinions specified in subparagraphs (e) and (f) of subdivision (B) of the first paragraph of this Section 5, counsel may in fact rely as to the title to the units at the time of delivery to the Vendee upon the opinion of counsel for the Seller. In giving the opinion specified in subparagraph (e) of subdivision (B) of the first paragraph of this Section 5, Messrs. Cravath, Swaine & Moore may in

fact rely, as to any matters governed by the law of any jurisdiction other than New York or the United States, on the opinions of counsel for the Seller, the Vendee or the Guarantor as to such matters, *provided* that such counsel shall state that they have made an independent investigation of the matters contained in such opinions and that they concur in the conclusions expressed therein.

The obligation of the Assignee hereunder to make payment for any Group of the Equipment is hereby expressly conditioned upon the prior receipt by the Assignee, pursuant to the Finance Agreement, of all the funds to be furnished to the Assignee by the Investors parties to the Finance Agreement with respect thereto.

The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement will constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

In the event that the Assignee shall not make any payment to be made by it as herein provided, the Assignee shall reassign to the Seller, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of Equipment with respect to which such payment has not been made by the Assignee upon repayment to the Assignee of all amounts, if any, theretofore paid by the Assignee to the Seller in respect of such units.

It is understood and agreed that the Assignee shall not be required to make any payment in respect of any Equipment excluded from the Conditional Sale Agreement pursuant to Article 2 or 3 thereof.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee or the Guarantor thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such

assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Seller hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the Vendee and the Guarantor) it is a valid and existing agreement binding upon the Seller, the Vendee and the Guarantor, and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; *provided, however*, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited.


SECTION 9. Although this Assignment is dated as of October 15, 1968, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respec-

tively, the date or dates stated in the acknowledgments hereto annexed.

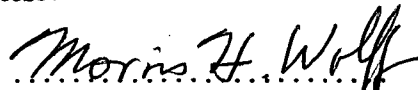
IN WITNESS WHEREOF, the parties hereto, each pursuant to due authority, have caused these presents to be executed in their respective corporate names by officers duly elected and authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

LEASE FINANCING CORPORATION,

[CORPORATE SEAL]

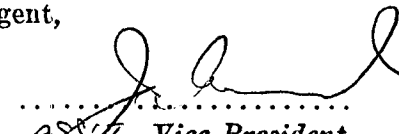
by  Vice President.

Attest:


Assistant Secretary.

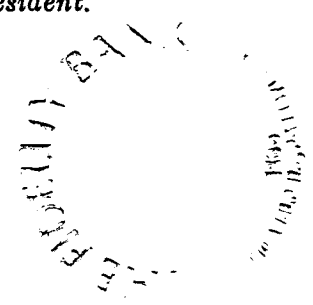
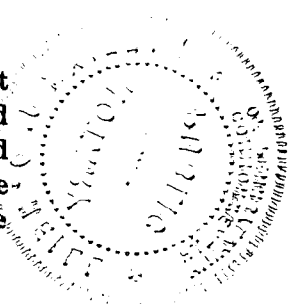
THE FIDELITY BANK,
as Agent,

[CORPORATE SEAL]

by  Vice President.

Attest:


Assistant Secretary.



COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } SS.:

On this ^{20th} day of ^{December}, 1968, before me personally appeared ^{LOUIS H. ZEHNER, JR.} ~~D. CHARLES MERRIWETHER~~, to me personally known, who, being by me duly sworn, says that he is ^{VICE} President of LEASE FINANCING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

.... *William J. O'Neill*
Notary Public

My Commission Expires WILLIAM J. O'NEILL
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires June 26, 1972

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } SS.:

On this ^{23rd} day of ^{December}, 1968, before me personally appeared ^{J. F. McDonald} ~~J. F. McDonald~~, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE FIDELITY BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

.... *Harry Christensen*
Notary Public

My Commission Expires
HARRY CHRISTENSEN
Notary Public, Philadelphia County
135 S. Broad St., Philadelphia 9, Pa.
My Commission Expires March 15, 1969

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of October 15, 1968.

NEW ENGLAND MERCHANTS FINANCIAL
CORPORATION,

by *John K. Beeten*.....
Vice President.

PENN CENTRAL COMPANY,

by *R. W. Foden*.....
Assistant Vice President—
Corporate.